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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,754	02/05/2007	Werner Swoboda	OST-051300	2033
22876 7590 06/30/2009 FACTOR & LAKE, LTD 1327 W. WASHINGTON BLVD. SUITE 5G/H CHICAGO, IL 60607				
EXAMINER				
GRAVINI, STEPHEN MICHAEL				
ART UNIT		PAPER NUMBER		
3743				
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06/30/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/565,754

**Applicant(s)**

SWOBODA ET AL.

**Examiner**

Stephen M. Gravini

**Art Unit**

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 April 2009.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-41 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-41 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 23 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 20070223  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 103***

Claims 1-4, 29-31, and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kreuzer (US 6,419,983) in view of Chang et al. (US 5,033,203) in view of Nilsson et al. (US 4,416,068). The claims are reasonably and broadly construed, in light of the accompanying specification, to be disclosed by Kreuzer, as comprising:

a lifting truck **2** with a running gear **27**, said lifting truck having a lifting platform **7** for receiving the object, the height of which lifting platform relative to the running gear can be adjusted by means of a motor (column 7 line 13). Kreuzer also discloses the claimed lifting platform is tiltable relative to the running gear by means of a motor (figure 1), wherein the lifting platform comprises two planes which are separated from one another by at least one length-variable ram (figure 2), container with an opening, through which the object can be guided into the container by height adjustment of the lifting platform, and in that the interior space of the container can be subjected to electromagnetic radiation by at least one radiator (figure 3), control system which controls the height of the lifting platform in dependence on the upward-facing outer contour of the object (figure 2), wherein the height of the lifting platform can be changed by the control system in such a way that, during a conveying movement of the object past the at least one radiator, the amount of electromagnetic radiation striking the

material per unit area, and the intensity thereof, in each case does not fall below predeterminable threshold values required for hardening (figure 1), wherein the height of the lifting platform can be changed by the control system in such a way that, during a conveying movement of the object past the at least one radiator, the distance in the vertical direction between the object and the at least one radiator remains at least approximately constant (figure 1), lifting truck and a traveling path for the lifting truck, along which path the at least one radiator is arranged, and in that a receiving station for receiving the object on the lifting platform and a delivery station for delivering the object spatially coincide (figure 5), wherein the conveying system comprises at least two lifting trucks and in that, between a receiving station for receiving the object on the lifting platform and a delivery station for delivering the object, two traveling paths for the lifting trucks extend in such a way that the lifting trucks can circulate in a closed circuit between the receiving station and the delivery station (figure 2). Kreuzer discloses the claimed invention, except for the claimed at least one radiator is arranged in such a manner that the lifting truck and the object located thereon can be guided through under the at least one UV or IR radiator. Chang, another apparatus that can be used for hardening a coating of an object, discloses that feature at column 2 lines 3-59. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer, with the at least one radiator is arranged in such a manner that the lifting truck and the object located thereon can be guided through under the at least one UV or IR radiator of Chang for the purpose of providing efficient electromagnetic radiation for treating an object. Kreuzer in view of Chang discloses the invention, as claimed, except for the at

least one radiator producing electromagnetic radiation and a conveying system that moves an object to the proximity of the radiator and moves it away from the radiator again. Nilsson, another apparatus that can be used for hardening a coating of an object, disclosed that feature at column 3 lines 14-58 and shown in figures 1-7. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer in view of Chang with the teachings of Nilsson for the purpose of allowing precise and accurate electromagnetic radiation application, as discussed in the first obviousness rejection above.

Claims 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kreuzer in view of Chang in view of Nilsson in further view of Vermeulen (US 6,898,868). Kreuzer in view of Chang in view of Nilsson discloses the claimed invention, as rejected above, except for the claimed at least one radiator is fitted in a wall, a ceiling or a floor of the container, wherein at least one radiator is fitted in the opposite side walls running parallel to the translatory movement of the objects and in at least one of the two end walls running perpendicular to the translatory movement of the objects or in a ceiling or a floor of the container, wherein a multiplicity of radiators are arranged on all walls and in a ceiling or a floor of the container, wherein a plurality of radiators are arranged on a bridge-like portal frame which has two substantially vertical legs and a substantially horizontal base, wherein the arrangement of the radiators on the substantially vertical legs of the portal frame is adapted to the course of the lateral surfaces of the object, wherein the arrangement of the radiators on the substantially horizontal base is adapted to the course of the upward-facing surface of the object.

Vermeulen, another device to treat vehicles, discloses those features at column 4 lines 1-53. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer in view of Chang in view of Nilsson with the features discussed above, as disclosed in Vermeulen, for the purpose of allowing a movable treatment area for treated objects.

Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kreuzer in view of Chang in view of Nilsson in further view of Beck et al. (US 7,105,206). Kreuzer in view of Chang in view of Nilsson discloses the claimed invention, as rejected above, except for the claimed protective gas can be supplied to the interior space of the container, wherein the protective gas is heavier than air, wherein the protective gas is lighter than air, wherein there is an inlet for the protective gas in the immediate vicinity of the at least one radiator, wherein at least one radiator is assigned a movable reflector on the side facing away from the object, wherein the container is at least partly lined with a reflective layer, wherein the layer is uneven, wherein the layer consists of an aluminium foil. Beck, another device to treat vehicles, discloses those features at column 1 line 47 through column 2 line 52. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer in view of Chang in view of Nilsson with the features discussed above, as disclosed in Beck, for the purpose of allowing a movable treatment area for treated objects. Furthermore, Kreuzer in view of Chang in view of Nilsson in view of Beck, discloses the claimed invention, except for the claimed lighter than air gas or aluminum foil. It would have been an obvious matter of design choice to provide those features, since the teachings

of Kreuzer in view of Chang in view of Nilsson in further view of Beck would perform the invention as claimed, regardless of the recited lighter than air gas or aluminum foil.

Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kreuzer in view of Chang in view of Nilsson in further view of Miskella (US 2,498,339). Kreuzer in view of Chang in view of Nilsson discloses the claimed invention, as rejected above, except for the claimed booth housing which prevents uncontrolled escape of gases and electromagnetic radiation, wherein a lock for the object is respectively provided at the inlet and at the outlet of the booth housing, wherein an inlet for protective gas is arranged within the inlet-side lock in such a way that a hollow space present in the object is flushed with a protective gas, wherein a device for removing oxygen from the atmosphere situated within the booth housing is provided, wherein the device for removing oxygen has a catalyst for catalytically binding the oxygen, wherein the device for removing oxygen has a filter for absorbing oxygen, wherein the device for removing oxygen has a filter for adsorbing oxygen, further comprising a preheating zone for removing the solvent from the material of the coating, preheating zone for partial gelling of pulverulent material and post-heating zone for completing the hardening. Miskella, another device to treat vehicles, discloses those features at column 2 line 52 through column 4 line 29. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer in view of Chang in view of Nilsson with the features discussed above, as disclosed in Miskella, for the purpose of allowing a booth area for treated objects. Furthermore, Kreuzer in view of Chang in view of Miskella, discloses the claimed invention, except for the claimed preheating zones for various functions. It

would have been an obvious matter of design choice to provide that feature, since the teachings of Kreuzer in view of Chang in view of Nilsson in further view of Miskella would perform the invention as claimed, regardless of the recited preheating zones for various intended uses.

Claims 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kreuzer in view of Chang in view of Nilsson in further view of Best (US 4,785,552). Kreuzer in view of Chang in view of Nilsson discloses the claimed invention, as rejected above, except for the claimed control system comprises a memory for storing three-dimensional shape data of the object, wherein the apparatus comprises a measuring station which is arranged upstream of the at least one radiator in the conveying direction and by which three-dimensional shape data of the object can be acquired, wherein the measuring station comprises at least one light barrier, wherein the measuring station comprises a video camera and a device for digital image recognition, wherein the measuring station comprises at least one optical scanner, by which the object can be scanned at least in one direction, wherein the optical scanner comprises an infrared light source. Beck, another device to treat vehicles, discloses those features at column 15 line 56 through column 16 line 59. It would have been obvious to one skilled in the art to combine the teachings of Kreuzer in view of Chang in view of Nilsson with the features discussed above, as disclosed in Beck, for the purpose of allowing a memory storing measuring station for treated objects for accurate and precise controlled treatment. Furthermore, Kreuzer in view of Chang in view of Nilsson in view of Beck, discloses the claimed invention, except for the claimed light barrier, video camera, or



optical scanner. It would have been an obvious matter of design choice to provide those types of measuring devices, since the teachings of Kreuzer in view of Chang in view of Nilsson in further view of Beck would perform the invention as claimed, regardless of the recited measuring devices.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending Application No. 10/565,752 in view of Nilsson. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one skilled in the art to combine the claimed features with the lifting platform of Nilsson for the purpose of allowing precise and accurate electromagnetic radiation application, as discussed in the first obviousness rejection above.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Other references cited in this action disclose one or more claimed features, but are not relied upon in rejecting the claims.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen M. Gravini/  
Primary Examiner, Art Unit 3743